#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First named inventor:

Robert Walther

Application No.:

10/757,564

Art Unit:

3751

Filed:

January 15, 2004

Examiner:

unknown

Title:

Method of Manufacturing a Fuel Filler Tube

Agent's Ref.:

1406-23/JLW

Attorney:

Paul Shanoski

#### SENT BY FAX

Commissioner for Patents
U.S. Patent and Trademark Office
Mail Stop Petition
P.O. Box 1450
Alexandria, VA 22313-1450
U.S.A.

Dear Sir:

## RENEWED PETITION UNDER 37 CFR 1.47(a) AND PETITION UNDER 37 CFR 1.183

The undersigned being hereby warned that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such wilful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that:

- 1. The PETITIONER, Detlef Stoetzel, hereby renews his petition that the United States Patent Application filed on January 15, 2004, entitled "Method of Manufacturing a Fuel Filler Tube" and assigned serial number 10/757,564, be accepted for filing in the United States Patent and Trademark Office, and submits the following in reply to the Decision on the original Petition under 37 CFR 1.47(a), mailed on September 15, 2004. Presented herewith is a separate petition for a 4-month extension of time for filing a reply to the Decision.
- The petitioner repeats and relics on the grounds of petition previously set out in the Petition filed originally on September 20, 2004. As set out in the Decision of September

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15, 2006, the Petitioner has already met requirements (1) to (3) of Rule 1.47(a). The grounds for this renewed petition are as follows:

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- (a) Diligent efforts were made to locate the non-signing inventor Mr. Walther and obtain his consent;
- (b) Mr. Walther refused to provide his signature unless Marinrea paid to him additional monies to which he is not entitled;
- Evidence is submitted which establishes Martinrea's right, title, and ownership (c) over the invention:
- (d) The Petitioner has made a declaration on behalf of Robert Walther pursuant to 37 CFR 1.64;
- (c) The statement of facts set out in the affidavit affirmed by Mark Eisen on March 15, 2007; and, in the affidavit affirmed by Vincent Man on March 15, 2007 filed herewith.
- A letter to the Canadian Patent Office dated January 5, 2006 with attached (t) assignment and affidavit of Mark Eisen sworn January 5, 2006 with Mr. Walther's employment agreement attached as Exhibit A and Ms. Wilson's correspondence with Mr. Walther attached as Exhibit B.
- 3. A Petition for a 4 month Extension of Time is filed concurrently herewith.
- 4. The Petitioner further petitions that the requirements of 37 CFR 1.52(c)(1) were met, and that the declaration was properly executed by the participating inventor Stoetzel as required under 37 CFR 1.52(c)(1), thus fulfilling the fifth requirement of 37 CFR 1.47(a). The grounds for this petition are as follows:
  - (a) 37 C.F.R. 1.52(c)(1) only requires that changes must be made before the signing of the oath or declaration ... and should be dated and initialled or signed by the applicant on the same sheet of paper; Mr. Stoetzel made the alteration and then signed and dated the declaration on the same sheet as the alteration, thus complying with the requirements of 37 C.F.R. 1.52(c)(1);
  - (b) Further evidence that Mr. Stoetzel was aware of, and made the alteration, is provided by the assignment executed by Mr. Stoetzel in connection with the

Page 2 of 3

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corresponding Canadian patent Application, said assignment enclosed with the letter of Mark Eisen dated January 5, 2006 to the Canadian Patent Office.

- 5. The petition fee as set out in 37 CFR 1.17(g) in respect of the renewed petition under 37 CFR 1.47 is \$200.00 and an extension fee pursuant to 1.136(1) and 1.17(a) in the amount of \$1,590.00. The fees are to be charged to our Deposit Account No. 500663. A duplicate of this paper is enclosed if required for this purpose.
- 6. The Commissioner is authorized to charge any deficiency or credit any overpayment in the above fees to our Deposit Account No. 500663. A duplicate of this page is enclosed if required for this purpose.

March 15, 2007
Date

Mark B. Eisen Registration No. 33088

Customer Number: 38735

Enclosures:

Duplicate page

Petition for 4-month extension of time

Affidavit of Vincent Man Declaration of Mark Eisen

EdcV:jp

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IN THE MATTER OF United States Patent Application No. 10/757,564 for METHOD OF MANUFACTURING A FUEL FILLER TUBE filed by Robert WALTHER and Detlef STOETZEL on January 15, 2004 ("the Application")

### DECLARATION OF MARK EISEN (affirmed March 15, 2007)

The undersigned being hereby warned that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such wilful false statements may jeopardize the validity of the application or any patent resulting therefrom, declares that:

- 1. I am a barrister and solicitor and a patent agent in good standing before the United States Patent and Trademark Office as a foreign attorney. I was appointed as agent and representative in respect of United States Patent Application No. 10/757,564. As such, I have personal knowledge of the matters to which I hereinafter depose, except where my knowledge is stated to be based upon information and belief.
- 2. Attached an Exhibit to this Declaration is a letter I sent to the Canadian Patent Office in connection with the corresponding Canadian Patent Application. Enclosed with my letter was an assignment executed by one of the inventors Mr. Detlef Stoetzel and an affidavit sworn by me on January 5, 2006 that included a copy of Mr. Walther's employment agreement as Exhibit A and a copy of correspondence between Ms. Wilson of our firm and Mr. Walther starting November 1, 2004 as Exhibit B.
- 3. I am advised by Gabriel Pascu, in-house legal counsel for Martinrea International Inc. ("Martinrea"), that Martinrea employed both Robert Walther and Detlef Stoctzel, the named inventors of Application No. 10/757,564, at the time the invention described therein (the "Invention") was made. During the preparation of the priority application I personally interviewed Robert Walther at Martinrea's premises on January 7, 2003. At that time Mr. Walther was introduced to me, in his own presence, as an employee of Martinrea, and Mr. Walther did not contradict this

information. This incident took place in the province of Ontario. Mr. Walther was hired as a Project Manager for duties including the planning and developing methods and procedures for implementing a manufacturing program including the timing, concept, feasibility, design review, tooling/equipment, try-out, prototype, mass production parts, launch and final buy-off as well as participating in product design. A copy of his employment agreement and job description is attached as Exhibit A to my affidavit of January 5, 2006 filed with the Canadian Patent Office in respect of the corresponding Canadian Patent Application. I am satisfied as a barrister and solicitor in the province of Ontario that based upon these facts, the ownership of any invention described in the Application at issue here vests in Martinrca.

- 4. The priority application was filed in Canada on January 17, 2003, and was assigned serial number 2,417,248. I am advised by Mr. Pascu and verily believe that Mr. Walther's employment was terminated on July 15, 2003, after Canadian Patent Application No. 2,417,248 (the "Priority Application") was filed.
- 5. After Mr. Walther's employment was terminated, efforts were made by Jenna Wilson, another patent agent at my firm, to contact him at his last known address. These efforts were initially unsuccessful, as set out in the Affidavit of Jenna Wilson dated September 15, 2004, previously filed in respect of this Application.
- Subsequently, in November 2004 Ms. Wilson contacted Mr. Walther by courier to Weil Engineering where it was believed he had taken up employment. She requested that he formally assign his rights in the invention to Martinrea. I am advised by Ms. Wilson and verily believe that Mr. Walther refused to sign any documents relating to the Application unless Martinrea paid him compensation in exchange for his signature. A copy of the correspondence between Ms. Wilson and Mr. Walther is attached as Exhibit B to my affidavit of January 5, 2006 filed with the Canadian Patent Office in respect of the corresponding Canadian Patent Application.

IN THE MATTER OF United States Patent Application No. 10/757,564 for METHOD OF MANUFACTURING A FUEL FILLER TUBE filed by Robert WALTHER and Detlef STOETZEL on January 15, 2004 ("the Application")

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#### **EXHIBIT**

To the Declaration of Mark Eisen affirmed March 15, 2007

A Commissioner, etc.

MARK B. EISEN Ext. 242 meisen@dimock.com

Certified by the Law Society as a Specialist in Intellectual Property (Patent) Law

#### HAND DELIVERED

January 5, 2006

The Commissioner of Patents Gatineau, Quebec K1A 0C9

ENTERED JAN - 5 2006

Dear Sir/Madam:

Re: Canadian Patent Application No. 2,417,248

Title: METHOD OF MANUFACTURING A FUEL FILLER TUBE

416 971 6638

Applicant: WALTHER, Robert; STOETZEL, Detlef

Our File: 1406-13/MBE

We enclose herewith an assignment transferring all rights in the invention from the inventor Detlef Stoetzel to Martinrea International Inc. for registration against this application.

We also enclose herewith for registration against this application an affidavit of the undersigned establishing that the assignee, Martinrea International Inc., is a legal representative of the joint inventor, Robert Walther.

The Commissioner is hereby authorized to charge our Deposit Account No. 600000075 in the amount of \$200.00 in payment of assignment registration fees.

Should the fees submitted with this letter be insufficient to cover all of the fees for which payment is explicitly or implicitly requested by this letter, the Commissioner is authorized to charge the amount of the insufficiency to our VISA account.

We look forward to receiving the Registration Certificates in due course.

Yours very truly, DIMOCK STRATTON LLP

MARK B. EISEN

MBE:If

Encl.

Assignment Affidavit of Mark Eisen

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MAR 1 5 2007

#### **ASSIGNMENT**

Robert WALTHER (Assignor), whose full post office address is 2210 Lakeshore Road East, Unit #405, Burlington, Ontario, Canada L7R 4J9; and

Detlef STOETZEL (Assignor), whose full post office address is 816-250 Webb Drive, Mississauga, Ontario, Canada L5D 3Z4;

95 PRINCESS MARKARET &LVO. \$TOBICOKE, ON , MS\$ 222 in consideration of One Dollar and other good and valuable consideration, the receipt of which is-hereby acknowledged, do hereby sell and assign to

MARTINREA INTERNATIONAL INC. (Assignee), whose full post office address is 30 Aviva Park Drive, Vaughan, Ontario, Canada L4L 9C7

of Manufacturing a fuel filter tube (the Invention), and in and to Canadian Patent Application No. 2,417,248 filed January 17, 2003; and United States Patent Application No. 10/757,564 filed January 15, 2004; and any registration or patent to issue therefrom or from any continuation, continuation-in-part or divisional application based thereon, the same to be held and enjoyed by the Assignee to the full end of the term thereof, as fully and entirely as the same could have been held and enjoyed by the Assignors if this assignment had not been made.

The Assignors hereby agree to execute without further consideration such further documentation as may be required to obtain any patent for the Invention and to vest rights in any patent or patent application for the Invention in the Assignee.

| WITNESSED at Rramaton, O. (City/Town, Countr | (Date)         |
|--|----------------|
| Witness:                                     | Robert WALTHER |
| (signature of witness)                       |                |
| (print name of witness)                      |                |

IN THE MATTER OF Canadian Patent Application No. 2,417,248 for METHOD OF MANUFACTURING A FUEL FILLER TUBE filed by Robert WALTHER and Detlef STOETZEL on January 17, 2003 ("the Application")

## AFFIDAVIT OF MARK EISEN (sworn January 5, 2006)

I, Mark Eisen, of the City of Toronto, AFFIRM THAT:

- 1. I am a barrister and solicitor and a Canadian patent agent in good standing before the Canadian Intellectual Property Office. I am a partner in the law firm Dimock Stratton LLP ("my firm"), the firm appointed as agent and representative in respect of Canadian Patent Application No. 2,417,248. As such, I have personal knowledge of the matters to which I hereinafter depose, except where my knowledge is stated to be based upon information and belief.
- I am advised by Gabriel Pascu, in-house legal counsel for Martinrea International Inc. ("Martinrea"), that Martinrea employed both Robert Walther and Detlef Stoetzel, the named inventors of Application No. 2,417,248, at the time the invention described therein (the "Invention") was made. I attach as Exhibit "A" a letter of confirmation of Robert Walther's employment by Hydroform Solutions (a division of Martinrea) dated October 18, 2002. During the preparation of the Application I personally interviewed Robert Walther at the Applicant's premises on January 7, 2003. At that time Mr. Walther was introduced to me, in his own presence, as an employee of Martinrea.
- 3. The Application was filed in Canada on January 17, 2003, and was assigned serial number 2,417,248. I am advised by Mr. Pascu and verily believe that Mr. Walther's employment was terminated on July 15, 2003, after the Application was filed.

MARK EISEN

After Mr. Walther's employment was terminated, efforts were made by my firm to contact him at his last known address. These efforts were initially unsuccessful. In November 2004, another patent agent at my firm Jenna Wilson successfully contacted Mr. Walther and requested that he formally assign his rights in the invention to Martinrea. Mr. Walther refused to sign any documents relating to the Application unless Martinrea paid him compensation in exchange for his signature. I am advised by Jenna Wilson and verily believe that Mr. Walther admitted to her that he was employed at Martinrea when the invention was created, but his position was that he worked hard on the project and management had failed to support him so he would not sign any documents without further compensation. Attached as Exhibit "B" is a copy of the letter and email exchange between Ms. Wilson and Mr. Walther.

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AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario, on January 5, 2006.

Commissioner for taking affidavits

Adrian M. Kuplan

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A Division of



#### PERSONAL AND CONFIDENTIAL

October 18, 2002

Dear Mr. Robert Walther:

This letter will confirm our offer of employment and your acceptance on the following terms.

416 971 6638

#### **Position**

You are being employed as Project Manager, Hydroforming. Your job description, duties and responsibilities shall be as discussed and otherwise consistent with the general duties and responsibilities of a Project Manager, Hydroforming. Your start date shall be October 21, 2002 or as soon as possible thereafter. You will be reporting to Detlef Stoetzel, General Manager.

#### Compensation

In consideration of your performance of your job duties and responsibilities, and the obligations contained in this Agreement, you will receive a yearly salary of \$85,000 CDN.

#### Vacation and Other Benefits

Your vacation entitlement shall be two weeks paid per year. You will also be placed on our employee benefit package. The details of this package are available from our Human Resource Department.

We will also reimburse you for mileage incurred for business purposes at \$ 0.30 (30 cents) per kilometer, and for all other business related expenses, as submitted by you on expense statements from time to time.

#### **Probationary Period**

There will be a probationary period of three (3) months during which time either the Company or the Employee can terminate employment without any further compensation being required. Subject to satisfactory performance, your appointment will take full effect at the end of the three (3) month period.

#### Termination

Your employment may be terminated by the Company at any time after the first three months by the giving of a one (1) month notice period or payment in lieu thereof, in the Company's sole discretion. In the event you wish to terminate your employment, you shall provide the Company with one (1) month working notice in writing, and the Company shall be entitled, in its discretion, to waive such notice, in which case your employment shall be terminated immediately, without further compensation.

#### Confidential Information

It is essential that the business and affairs of the Company, its subsidiaries or affiliated companies ("MRE") be kept in the strictest of confidence. Therefore, you shall not at any time or in any manner, except when authorized or required by law, divulge, disclose or communicate to any person, firm, agency or corporation any information concerning any confidential matters with respect to MRE. It is understood that a confidential matter shall be considered to be any matter which is not a matter of knowledge to the general public and in the event there is a dispute as whether any information is a matter of public knowledge, you shall bear the burden of demonstrating this.

#### No Competition or Solicitation of Company Customers

It is agreed that for a period of two (2) years following the termination of your employment with the Company you shall neither engage in a business competing directly or indirectly with MRE, nor solicit, directly or indirectly, any Company Customer. "Company Customer" shall be defined as any person, business or agency that is, or was during the period of your employment, a customer of MRE who you dealt with either directly or indirectly on behalf of MRE.

Please sign below in confirmation of the terms of this employment contract.

Yours sincerely,

MARTINREA

I have read the above and agree to the terms of this employment contract:

On behalf of the Company:

#### JOB DESCRIPTION

416 971 6638

TITTLE: PROGRAM MANAGER

DEPARTMENT: ENGINEERING

REPORTING TO: ENGINEERING MANAGER

#### Scope

To manage activities of New Product Development and Continuous Improvements on existing programs. To ensure the production of products that meet or exceed customer needs/expectations, and achieving maximum manufacturing efficiencies. Active participant in plant management team to maximize effective use of resources.

#### JOB REQUIREMENTS:

- Engineering Degree and or equivalent experience
- Preferably 7 years of relevant progressive work experience in the automotive industry
- Thorough understanding of QS 9000 requirements
- Be motivated and capable of delivering projects on time and within budget
- Required to work extra hours to meet customer needs
- · Able to work at various locations within and outside the plant
- Required to travel
- Good organizational, leadership, interpersonal and problem solving skills
- Work independently and or in a team environment

#### RESPONSABILITIES:

- Manages program to ensure that implementation and related activities are carried out in accordance with customers specified objectives
- Plans and develops methods and procedures for implementing program to include timing, concept, feasibility, design review, tooling/equipment, try-out, prototype, mass production parts, launch, final buy-off
- Participates in product design offering constructive input about manufacturing
- Coordinates programs as per the APQP process and monitor the work and associated resources during the project implementation
- Keeps customer informed by updating, timelines and or open issues list
- Continually review project progress and adjust parameters if necessary to steer the project to a successful completion
- Coordinates changes request from customers, reviewing development efforts and then communicating updated costs and schedules to the customer
- Develops quotations for piece price, tooling/equipment and capitol costs
- Maintains/updates all related costs to program budget
- Prepares and updates upper management team with program timing and any major issue that needs to be resolved
- Coordinates initial product shipments to ensure product is delivered on time

P.17/28
EXHIBIT B
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MAR 1 5 2007



Intellectual Property Law

JENNA L. WILSON Ext. 290 jwilson@dimock.com

SENT BY COURIER

November 1, 2004

URGENT - REPLY REQUIRED

Mr. Robert Walther
Weil Engineering
1180 E. Big Beaver
Troy, Michigan 48083-1934
USA

Dear Mr. Walther:

Re:

United States Patent Application No. 10/757,564

Title:

METHOD OF MANUFACTURING A FUEL FILLER TUBE

Applicant:

Martinrea International Inc.

Our File:

1406-23/JLW

I am writing on behalf of Martinrea International Inc. ("Martinrea"), the assignee and owner of U.S. Patent Application No. 10/757,564. This patent application, "Method of Manufacturing a Fuel Filler Tube" claims priority from Canadian Patent Application No. 2,417,248, which was filed during the time of your employment with Martinrea. You are a named inventor in respect of these patent applications.

Martinrea requires your signature and the date of your signature on the document entitled "Utility Patent Application: Declaration, Power of Attorney" at the place marked. Please call me at (416) 971-7202, collect, to acknowledge receipt of these documents, and courier or fax the signed Declaration and Power of Attorney back to me. You will be reimbursed for any reasonable delivery charges.

If, for some reason, you cannot or will not return the executed Declaration and Power of Attorney back to me by November 12, 2004, please call me collect at (416) 971-7202 or e-mail me at jwilson@dimock.com to let me know.

-2-

I look forward to receiving the executed Declaration and Power of Attorney on or before November 12, 2004.

Yours very truly,
DIMOCK STRATION LLP
ORIGINAL SIGNED BY
JENNA L. WILSON

JENNA L. WILSON

JLW:rt

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MAR 1 5 2007

IN THE MATTER OF United States Patent Application No. 10/757,564 for METHOD OF MANUFACTURING A FUEL FILLER TUBE filed by Robert WALTHER and Detlef STOETZEL on January 15, 2004 ("the Application")

#### AFFIDAVIT OF VINCENT MAN

(affirmed March 15, 2007)

The undersigned being hereby warned that willful false statement and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any patent resulting therefrom, declares that:

- 1. I am an articled student employed by the law firm Dimock Stratton LLP, solicitors appointed as agent and representative in respect of United States Patent Application No. 10/757,564. As such, I have personal knowledge of the matters to which I hereinafter depose, except where my knowledge is stated to be based upon information and belief.
- 2. I am advised by Jenna Wilson and verily believe that in an attempt to obtain the signature of Mr. Walther for a declaration and power of attorney for U.S. Patent Application No. 10/757, 564, she attempted to look up Mr. Walther's phone number. Marked as Exhibit "A" to my affidavit is a copy of the printouts off of Canada411.com provided to me by Ms. Wilson.
- On March 7, 2007, I called all of the numbers in the entries listed in Exhibit
   "A". I was unable to reach a Robert Walther that was aware of Martinea or
   Hydroform Solutions.
- 4. The following numbers were dialed to which an automated message advising that the number was not assigned was received:
  - (a) (519) 576 1235;
  - (b) (519) 468 3272.

INCENT MAN

- 5. The following number was dialed to which a high-pitched noise was received: (905) 803 9405.
- 6. The following numbers were dialed to which I was advised by the individuals answering or returning my call that they were not aware of anyone named Robert Walther:
  - (a) (905) 897 9390;
  - (b) (905)827 3431;
  - (c) (905)479-6170;
  - (d) (905) 632 9388;
  - (e) (519) 856 9452.
- 7. I dialed the number (905) 476 3399 and the individual acknowledged that they were Robert Walther. He advised that he had never heard of Martinrea or Hydroform Solutions.
- 8. I dialed the number (613) 473 4366 and the individual acknowledged that they were Robert Walther. He advised that he had never heard of Martinrea or Hydroform Solutions.

AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario, on March 15, 2007.

Commissioner for taking affidavits

Étienne de Villes.

IN THE MATTER OF United States Patent Application No. 10/757,564 for METHOD OF MANUFACTURING A FUEL FILLER TUBE filed by Robert WALTHER and Detlef STOETZEL on January 15, 2004 ("the Application")

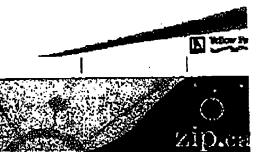
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#### **EXHIBIT "A"**

To the Affidavit of Vincent Man affirmed March 15, 2007

A Commissioner, etc.

## Canada 41111<sup>™</sup>



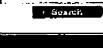
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52 of 65

53 of 65

3323 Rymal Rd Mississauga, ON L4Y 3C2

WALTHER, P.

(905) 803-9405

Did You Go to School with P Fina Romance in Mississauga at

Para ca

WALTHER, P 3323 Rymal Rd

Mississauga, ON L4Y 3C2

(905) 897-9390

Dia you Go to School with P

Viewer 7 Fino Romance in Mississausa at Date ea

WALTHER, P & D

1418 Silversmith Dr Oakville, ON L6M 2X3 (905) 827-3431

Did You Go to School with P & D <u>Ema Romance in Qakyile at</u>

Date ca

<u>walther</u> r

62 Evelyn Ave Br 1 Keswick, ON L4P 3C8 (905) 476-3399

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54 of 65 More information

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Fing Romance in Keswick at Dare ca 55 of 65 WALTHER, R More information RR 5 Madoc, ON KOK 2KO (613) 473-4366 Did You Go to School work R Find Romance in Madoc at Date 53 56 of 65 WALTHER, RONALD More information 68 Highgate Dr Markham, ON L3R 3R9 (905) 479-6170 Did You Go to School with Ronald <u>waider?</u> Find Romance in Maistian at 57 of GS Walther, 5 & 8 2077 Prospect St More information Burlington, ON L7R 1Z4 (905) 632-9388 Did You Go to School with S. & S wanter? Find Remance in Budington M Date.ca 58 of 65 WALTHER, SCOTT 286 Main St N Rr 1 More information Rockwood, ON NOB 2KO (519) 856-9452 Did You Go to School with Scott Wattner? Find Remands in Redeward at Date co 59 of 65 WALTHER, I 25 Greenock Dr More information Kitchener, ON N2E 239 (519) 576-1235 CHI YOU GO TO SCHOOL WITH T Find Remance in Kitchener at 60 of 65 WALTHER, T RR 1 More information Narwich, ON NOJ 170 (519) 468-3272 Did You Go to School with T Whiliner? Fing Romance in Notwich at Date ca

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